IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1102 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL CORP.

Versus

AHMEDABAD MUNICIPAL NOKAR MANDAL

Appearance:

1. Special Civil Application No. 1102 of 1996
M/S ANAND ADVOCATES for Petitioner No. 1
NOTICE SERVED for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 26/03/2004

ORAL JUDGEMENT

Heard learned advocate Mr. D.C.Raval appearing on behalf of the petitioner Corporation. Though notice of Rule has been served to the respondent, no one

remained present and appeared in the present proceedings. This being an old matter of 1996, this Court has not waited for the other side, and therefore, the matter has been taken up for final hearig in absence of the respondent.

2. The petitioner Corporation has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 783 of 1983 dated 20.9.1995 wherein the Tribunal has granted charge allowance to the respondent in the grade of Fitter w.e.f. 1.1.1990. Initially this Court has issued rule and ad interim relief has been granted by order dated 8.8.1996 which ultimately was confirmed by order dated 5.10.1996.

3. Learned advocate Mr. Raval submitted that the Tribunal has committed gross error in granting charge allowance in favour of the respondent workman. He submitted that there is no order issued by the Corporation in favour of the respondent to work as a Fitter. Actually he was Wireman Helper and no additional work has been taken by the Corporation from the respondent workman to the post of Fitter. Therefore, the Tribunal has committed gross error in granting the charge allowance in favour of the respondent workman. Tribunal has not properly appreciated the evidence of Anilbhai who was the witness of the Corporation. Therefore, he submitted that Tribunal has committed gross error while passing such award which require interference by this Court. Learned advocate Mr. Raval has submitted that the present respondent workman is already retired from service.

4. I have considered the submissions made by learned advocate Mr. D.C.Raval. I have perused the award passed by the Tribunal and also the written statement filed by the Corporation and also the evidence of witness of the Corporation of Anilbhai at Annexure-C as also written submissions submitted by the Corporation.

5. The question is that whether the respondent workman is entitled the charge allowance in the scale of Fitter post or not. For that, Tribunal has considered the oral evidence of the respondent workman and in his evidence vide Exhibit-6, it was deposed by him that he was working as Wireman Helper. Initially, the work of Fitter has been taken by the Corporation. He has repaired the pump, motor and other work of the Fitter performed by the respondent workman. He maintained a diary of work which has been done by him and that diary was produced before the Tribunal vide Exhibit-22. One

witness who is concerned workman was examined before the Tribunal vide Exhibit-7 and he also deposed the same thing that from 1964 onwards, work of Fitter is to repair pump and motor which was otherwise not the work of Wireman Helper. The witness of the Corporation has denied this fact in his evidence. Thereafter Tribunal has considered the evidence of witness of Corporation. The witness of the Corporation Anilbhai in cross-examination admit that whatever work has been performed by this workmen, they maintain diary but he was not aware about the fact whether higher officers have signed such diary or not. The said witness has also admitted the fact that these workmen were repairing smaller pump and not larger pump. They are also required to change the valve, to repair the valve and to change the pipeline. These are the work which are to be carried out by respondent which are related to the post of Fitter. The deposition has been made by the witness of the Corporation that to repair the smaller pump and to change pipeline and to repair the valve, these are not the work of Fitter but these are the work of Wireman Helper. This aspect has also been considered by the Tribunal and the Tribunal has raised the question that if the Fitter has to repair the larger pump and pipeline and valve then who is the person repairing the smaller pump and valve and pipeline, that fact has not been disclosed by the Corporation. Meaning thereby that work of the Fitter is to repair the pump, either it may be smaller or larger. Ultimately, looking to the oral evidence of two workmen and witness of the Corporation and considering the diary Exhibit-22, Tribunal has come to a finding that respondent workmen were performing the duties of the Fitter, and therefore, they are entitled the charge allowance to the scale of Fitter. The demand of the workmen was w.e.f. 1.1.1976 but instead of that Tribunal has granted only w.e.f. 1.1.1990.

6. I have perused the reasoning given by the Tribunal and also the findings given by the Tribunal which relate to finding of fact and also a proper appreciation of evidence. This Court cannot reappreciate the same evidence while exercising powers under Article 227 of the Constitution of India. It is also a settled principle of law that if the Tribunal or Court found that the person is performing duties of a higher post, though temporarily or on officiating capacity, then, on the principle of quantum meruit, atleast he is entitled the charge allowance of the higher post. This aspect has been examined by the Apex Court in the case of Selvaraj v. Lt. Governor of Island, Port Blair & Others, 1998 (2) LLJ 1191. The Apex Court has granted salary of the

higher post. Therefore, considering this aspect, according to my opinion, Tribunal has not committed any error which require any interference by this Court. There is no procedural irregularity committed by the Tribunal. This Court cannot interfere in such award while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Present petition is therefore dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.Rathod,J)

Jayanti*